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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

4 M. DIANE KOKEN, : Civil Action No. .
5 Plaintiffs, : 07-048-JJF
6 v. :
7 PAULA FINANCIAL, :
8 Defendant. : .

10 April 24, 2008

15 Telephone Conference
16 Thursday, April 24, 2008
16 5:30 p.m.

BEFORE : THE HONORABLE MARY PAT THYNGE

22 BSR -- BASYE SANTIAGO REPORTING
23 Suite 903, One Commerce Center
1201 North Orange Street
Wilmington, Delaware 19801
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1 APPEARANCES :

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6 Representing the Plaintiff

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8 HOLME, ROBERTS & OWEN, LLP
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12 Representing the Defendant

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2 THE COURT: Gentlemen, the
3 purpose of this was to have a formalized
4 record before you actually draw up the
5 agreement as to what the terms and
6 conditions of the settlement are. My
7 understanding is this and I just want to
8 confirm with both sides that there is an
9 agreement in the amount of \$2 million to
10 settle this case. Is that agreed to by the
11 plaintiff, Gerry?

12 MR. ARTH: Yes, Your Honor.

13 THE COURT: Is that agreed to
14 by the defendant, Bill?

15 MR. SWANK: Yes.

16 THE COURT: The agreement
17 also is that \$2 million would be paid within
18 30 days of the execution of the settlement
19 documents; is that agreed to Gerry?

20 MR. ARTH: Yes, Your Honor.

21 THE COURT: And is that agreed
22 to, Bill?

23 MR. SWANK: Yes.

24 THE COURT: There is going to

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1 be a release of all claims that arose in
2 this case. The parties would execute a
3 stipulation of dismissal. Each side of
4 course would be responsible for their own
5 fees and costs. Is that understood as well
6 too, Gerry?

7 MR. ARTH: Yes.

8 THE COURT: Is that understood
9 as well, Bill?

10 MR. SWANK: Yes, although we
11 are discussing broader releases, mutual
12 general releases which is what I think we
13 requested. Gerry asked for some information
14 which, Gerry, I e-mailed to you.

15 MR. ARTH: I got it, Bill,
16 thank you. And I forwarded it to my client.
17 I probably will not be able to get back to
18 you until early next week about it. But if
19 that's the extent of it, Bill, I think that
20 we may be able to work that out.

21 MR. SWANK: Okay.

22 THE COURT: So you were
23 looking for mutual general releases and I
24 think Gerry had a concern about subrogation?

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1 MR. ARTH: We were concerned
2 about possible claims and we have done
3 internal searches on that and I asked Bill
4 to provide some information from his clients
5 at Angle which he has given to me and I have
6 forwarded to my client. I am consciously
7 optimistic that we'll be able to provide the
8 general release and get one in return.

9 THE COURT: Okay.

10 MR. ARTH: At the very least
11 there will be a release of all claims in
12 this litigation that arises under the
13 indemnification agreement.

24 What would you like me to do

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1 regarding Judge Farnan, he is unaware of the
2 fact that the parties have reached at least
3 an agreement in principle for the most part
4 with the caveat about mutual general
5 releases and the limitation of concern that
6 might be there. Do you want me to say
7 anything to him?

8 MR. ARTH: Your Honor, I think
9 Judge Farnan gave us an extension; I think
10 he had given us an additional 60 days the
11 last time. I would just prefer that we work
12 out our issues and get the agreement done
13 and then advise Judge Farnan of the
14 settlement because I don't believe that we
15 are under any immanent time pressure.

16 MR. SWANK: That's fine with
17 me, Judge.

18 THE COURT: That's fine with
19 me too as long as you don't find yourself in
20 that circumstance later on down the road.
21 That's why I think working this out within
22 the next week, that is by next Thursday or
23 so would probably be appropriate.

24 MR. ARTH: We would certainly

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1 hope to have that done because from my
2 client's perspective they want to get it
3 done and have the money as soon as possible.
4 So my guess is that once we work this issue
5 out about the release, Judge, I could turn
6 out a draft settlement agreement to Mr.
7 Swank in a day or so.

8 MR. SWANK: My client, as you
9 know Judge, won't be back until May 5th.

10 THE COURT: Okay. I didn't
11 know he was going to be gone that long, how
12 nice. I just wanted to make sure that the
13 parties understood that they had an
14 agreement sooner rather than later.

15 Do either of you wish to have
16 a transcript of these proceedings or do you
17 just want to have a court copy? Since it's
18 settlement I would hold on to the Judge's
19 copy of this and wouldn't make it a part of
20 the court record unless the two of you ran
21 into a problem.

22 MR. ARTH: That would be fine,
23 Your Honor.

24 MR. SWANK: That is

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1 sufficient. I do not think I need a copy,
2 Judge.

3 THE COURT: Gerry, do you want
4 a copy?

5 MR. ARTH: I do not need a
6 copy at the moment, Your Honor. Thank you.

7 THE COURT: Is there anything
8 else about the general overview of the
9 settlement that you think needs to be added
10 on the record?

11 MR. SWANK: Just that the
12 settlement agreement will contain the usual
13 provisions of a settlement agreement, the
14 authority that you own the claims and that
15 you have the authority to release them, just
16 the general --

17 THE COURT: Boilerplate
18 language?

19 MR. SWANK: Yeah, I don't know
20 how to describe it beyond that.

21 MR. ARTH: Your Honor, a
22 simple agreement and, Bill, obviously we
23 would want the settlement proceeds wired, I
24 don't think that would be a problem.

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1 MR. SWANK: I don't think it
2 will be, no.

3 MR ARTH: Very well.

4 THE COURT: Thank you both.

5 Take care now.

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8 (Telephone conference

9 concluded at 5:43 p.m.)

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